

EXHIBIT A

COPY

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
AEDES DE VENUSTAS, INC.,

Plaintiffs,

vs.

VENUSTAS INTERNATIONAL, LLC.,

Defendant.
-----x

DEPOSITION OF ROBERT GERSTNER

Monday, June 11, 2007

New York, New York 10175

Reported by:

Nikki Montello

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DEPOSITION REPORTERS & VIDEO
INCORPORATED

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June 11, 2007

10:10 a.m.

DEPOSITION OF ROBERT GERSTNER, held at the
offices of JOSEPH M. HEPPT, ESQ., 521 Fifth
Avenue, Suite 1805, New York, New York 10175,
before Nikki Montello, a Notary Public within
and for the State of New York.

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A P P E A R A N C E S:

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BY: ROBERT G. SHEPHERD, ESQ.,

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S T I P U L A T I O N S

IT IS HEREBY STIPULATED AND AGREED by and between the attorneys for the respective parties hereto that filing, sealing and certification be and the same are hereby waived.

IT IS FURTHER STIPULATED AND AGREED that all objections, except as to the form of the question, be reserved to the time of the trial.

IT IS FURTHER STIPULATED AND AGREED that the within examination may be signed and sworn to before any Notary Public with the same force and effect as though signed and sworn to before this court.

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restraining order said that you had done a certain amount of business last year in terms of revenue. Do you remember what that number was?

A. Our sales in 2006?

Q. Yes, um-hum.

A. \$1.4 million, approximately.

Q. Okay. Now, sitting here today, can you tell me how this would break down between revenue that you get from the Web site, the bricks and mortar store, consulting services and product development? And you can just do it in fractions.

A. Product development, consulting and things as such?

Q. Yes. Just give me fractions. I don't need numbers.

A. I would roughly say but I would need to look into the numbers. But I would say that the store is about 50 percent and on-line and consulting services, including product development, between ourselves and with the other parties, about 25 percent. So 50 the store, 25 the on-line business and 25

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percent product development consulting,
roughly.

Q. Okay. All right. Now, tell me
what types of consulting services you do?

MR. HEPPT: When you say "you,"
you mean the business?

MR. SHEPHERD: The company, yes,
right.

A. The company?

Q. Yes.

A. Well, we offer different types of
consulting. We scent fashion shows and
obviously sit with the designers beforehand to
discuss that --

Q. I'm sorry, you used a word there
that I didn't get.

A. We scent --

Q. Oh, scent.

A. -- fashion shows. So you discuss
with the designers how do you do this and what
to do. We have an extensive corporate
business where we scent especially for the
holiday season. We sit with our clientele and
discuss all of those things.

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Q. The corporate, would that be gifting? In other words, figuring out what gifts to send out to people?

A. That is part of it, yes.

Q. What else would it be?

A. It would be to the overhandling the logistics, sending it out physically. It goes all over the country. What kind of gift, all that which is involved. We consult third parties in product development, different companies. We have done fragrances, skin care.

Q. Why don't you tell me about that?

A. Well, there is one company we developed a fragrance for them which they came out with their own name, published that fragrance.

Q. What was the company?

A. Back then it was called THREEAsFOUR.

Q. THREEAsFOUR.

A. They have changed names -- no, they were called AsFOUR back then and that I believe was the name of the fragrance. Now

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they have changed the name. Now it is
THREEAsFOUR. Skin care company in San
Francisco called Duchess Marden.

Q. What did you do for them?

A. Helped them building up the
brands as far as the different products are
concerned. Do you need a cleanser? Do you
need a moisturizer? You should add a toner,
you know, ingredients.

Q. Now, let's go back one second.
Is there any other thing within the corporate
business section that you do other than the
consulting with them to develop gift programs?

A. I don't understand your question.

Q. Okay. Good.

You told me that, in response to
my question, you told me that what you do for
your corporate clientele is that you sit with
them around the holidays and you develop a
gift program and figure out the logistics of
how to get things to other places, is that
correct?

A. That's part of it. Yes.

Q. Okay. What else is there?

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A. Yes.

3

Q. Is that your signature?

4

A. Yes.

5

Q. Did you read it over before you

6

signed it?

7

A. Yes.

8

Q. Were you involved in the

9

preparation of that declaration?

10

A. No.

11

Q. Okay. Who prepared it?

12

A. Joe Heppt.

13

Q. Okay. But he talked to you

14

before he prepared it?

15

A. Yes.

16

Q. In the declaration you state that

17

since 1995 the company has spent \$440,000 on

18

advertising?

19

A. Um-hum.

20

Q. Where did that number come from?

21

Did you look through your books?

22

A. Yes.

23

Q. Okay. When you were looking

24

through your books, did you notice how much

25

you had actually spent last year on

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advertising?

A. We don't advertise --

Q. You don't --

A. -- in a classic sense, that we do advertisement in papers.

Q. Okay.

A. This comes from different other activities --

Q. All right. Can you --

A. -- where we promote the company, catalogue, our catalogue.

Q. Oh, your catalogue. Okay.

A. Catalogues we have. The investment in the Web site. Investment in packaging, investment in product development. Those are the numbers. Do we compare numbers to previous year?

Q. Yes.

A. That's your question?

Q. Yes.

A. No, I don't.

Q. In the declaration you identify consumer marketing as one of the things you do to promote mark. What is that exactly?

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catalogues.

Q. Now, in that same declaration --

MR. SHEPHERD: Strike that.

(*r) I would like to ask you to have
him produce the --

MR. HEPPT: Newsletters?

MR. SHEPHERD: The newsletters
and the catalogues.

MR. HEPPT: I will take that
under advisement, sure.

MR. SHEPHERD: Okay. Sure.

Q. In the same declaration it says
that you promoted the mark through industry
activities. What does that mean?

A. I would consider scenting the
fashion shows, for example, what we get in
return also or events is press. And I'm sure
you have seen copies of the -- some of them,
which are in particular then published in WWD
and WWD Beauty Business, which is purely
within the industry. We had a lot of mention
in there, so that is what helps us or helped
us to get our name out and have people in the
industry recognize our name by doing events as

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think that we probably, individually have hundreds and hundreds on-line, if you go individually through every single product. So this is a fraction of what is on-line.

Q. Okay. Now, I direct your attention to the first page. That is the home page, is it not?

A. That is the cover page, correct.

Q. Now, at the top of the page there is a picture of a peacock, is there not?

A. Correct.

Q. And above it is the word Aedes Magazine?

A. Correct.

Q. What is that?

A. That is an on-line magazine and also it is an on-line magazine which there are some copies of it attached to this exhibit.

Q. Is it in the -- so it is the, the material in the back that you click on publications, that is what comes up?

A. Some of it. But there is some missing.

Q. Okay. Why do you call it the

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Aedes Magazine?

A. I don't understand.

Q. Well, why isn't it called Aedes
De Venustas Magazine?

A. Probably that is a question I
would need to ask Karl. He is the visual one,
as I said earlier. The creative person. He
probably just for visual purposes chose that.

Q. Okay. And what is the name of
your -- what is your domain name?

A. Aedes.com.

Q. Aedes.com? Do you also have a
Web site under Venustas.com?

A. No.

Q. Do you have any Web site in which
the word "Venustas" appears?

A. I can't answer that question. I
would need to ask Karl.

MR. HEPPT: I belatedly object to
the form of the question.

Q. Now, you have gift cards?

A. Yes.

Q. And how does the Web site on the
first page refer to that gift card?

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2 A. It says Aedes Gift Card and next
3 to it is a picture of the gift card reading
4 Aedes De Venustas.

5 Q. Then on the other side it says
6 Delux Gift Wrap. Can you tell me about --
7 part of the business is the presentation of
8 the fragrances, correct?

9 A. I guess in every part, everyone's
10 business, that is part of it in the beauty
11 industry.

12 Q. Okay. And do you have a
13 particular style of wrapping your product?

14 A. All products which we wrap are in
15 a black gift box, and upon request we add
16 fresh flowers on top of it.

17 Q. Okay. And it says here on the
18 Web site, our new luxurious, black gift boxes
19 are embossed with the Aedes goldleaf logo.

20 A. Um-hum.

21 Q. Does the word Aedes also appear
22 on the box.

23 A. The word Aedes, yes.

24 Q. Does the word Venustas appear on
25 the box?

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2 copy of the catalogue already?

3 MR. SHEPHERD: Yes.

4 Q. Now, a little bit further down
5 below, Mr. Gerstner, it says newsletter. And
6 it says Aedes Perfume News. Is that the
7 newsletter we were talking about earlier?

8 A. The electronic newsletter,
9 correct.

10 Q. And who does the Aedes Perfume
11 News go to? It goes to anybody who fills in
12 the E-mail address there?

13 A. Correct.

14 Q. Okay.

15 A. Approximately 10,000 people.

16 Q. Are the customers that come into
17 the bricks and mortar store on your mailing
18 list for the perfume news?

19 A. Some, I'm sure. Not all of them.

20 Q. Not all of them?

21 A. I wouldn't know.

22 Q. You wouldn't have any idea as to
23 what that number was?

24 A. No.

25 Q. What is advertised on your Web

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A. Categories, fragrances, skin care, body care, and home products.

Q. What are home products?

A. Candles, incense, potpourris, room sprays, sachets. We are working on a new device.

Q. Okay. Now, you have a trademark registration that shows that you also sell products that are labeled with the Aedes Venustas mark, is that correct?

A. Aedes De Venustas, correct.

Q. Right. And which of the categories that we've just discussed, the four categories, do you have Aedes De Venustas marked product for?

A. Bath and body and home.

Q. You don't sell any fragrances under the Aedes De Venustas mark?

A. Not yet.

Q. Do you advertise the body care, bath and body and the home products with the Aedes De Venustas mark on the Web site?

A. Yes.

Q. Do you advertise any of your

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consulting services on the Web site?

A. No.

Q. Why is it that you don't advertise any of your consulting services on the Web site?

A. Because if we would at this point, assuming there is a big response, we just would not be in a position to handle them yet.

Q. Okay. Do you advertise your consulting services anywhere else?

A. Like?

MR. SHEPHERD: Strike that.

Q. Do you advertise your consulting services anywhere?

A. Publicly, in print?

Q. Right.

A. No.

Q. Okay. Is there any other way that you advertise your consulting services?

A. Word by mouth.

Q. That's all?

A. Well, constantly in touch with people, you know, you talk about it.

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2 A. Right. When we started, we began
3 to bring particularly European companies under
4 one roof, companies which some of them their
5 roots go back to the 13th Century, who are not
6 based on the mass market but based on the old
7 tradition of perfume and the art of perfume.

8 This kind of concept in the last
9 couple of years exploded. That is what the
10 industry in these press pieces too, that is
11 what the industry calls now they all use the
12 term niche or specialty retail stores. Does
13 that make sense as an explanation?

14 Now, this has exploded, you see
15 this all over the place. There is also one of
16 the articles clearly saying that this is one
17 of the fastest growing segments of the market
18 while the mass market doesn't.

19 So that's how I would describe a
20 specialty retailer is concerned, what is now
21 called also niche markets. Very exclusive,
22 very limited distribution.

23 Q. So to you a specialty retailer is
24 one that focuses on a single category, for
25 example, in this case, the beauty category?

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MR. HEPPT: Objection to the form.

MR. SHEPHERD: What is the nature of the objection?

MR. HEPPT: I think it mischaracterizes his testimony.

MR. SHEPHERD: Okay.

MR. HEPPT: I think it is not what he said.

MR. SHEPHERD: Okay. Then we will strike the question.

BY MR. SHEPHERD:

Q. Does specialty retailer mean to you a retail establishment that focuses on a single product category?

A. No. Not necessarily.

Q. Okay. Can you give me an example of a specialty retailer, other than your business?

A. Barney's, Bergdorf Goodman.

Q. How do you -- why do you think of Barney's as a specialty retailer? How does that fit into the definition you gave before?

A. Because they focus in different

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areas, beauty and clothing and whatever. And whatever they cover, they focus on specialty lines and brands which are not mass market.

Q. What is the difference between mass market and specialty retailer? Is it the quality of the product?

A. I would say the quality and also the distribution.

Q. Explain that to me, when you say the distribution?

A. Distribution, the number of doors, for example, in New York City, a brand would sell to. The mass market brand would sell to, I don't know, 30, 40 50 just in the City, versus the special brands. Specialty brands would maybe have two or three doors in the City. That is one of the big distinctions between mass market and specialty.

Q. When you say two or three, did you say two or three doors?

A. Yes.

Q. When you say "doors," do you mean stores?

A. Right.

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Q. Okay. Do you consider the Gap stores to be mass market or specialty retail?

A. My personal opinion would be mass market.

Q. Okay. Do you consider Victoria's Secret to be mass market or specialty?

A. I don't know the operation well enough to answer the question.

Q. Would you consider Ann Taylor to be mass market or specialty.

A. I don't know their operation well enough to answer that question.

Q. Okay. From using Barney's as an example, it sounded to me like you are familiar enough with that operation to give an opinion, is that correct?

A. Yes, because I shop there.

Q. Okay. How many Barney's stores are there throughout the City?

A. Just one. The Barney's I am talking about. Then there is a sub-division of theirs which is called the co-op stores, but that is a different level of products and so on and so forth. So the Barney's I am

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talking about, one.

Q. Okay. This category that we are talking about that you're in, fragrance, bath and body, skin and home, can we call that the beauty category?

A. I don't think so. Because there is more to beauty than just that. Make up, for example, which we don't do.

Q. Okay. All right. But those things, those four categories -- well, let's leave out the home since that seems to be -- would you consider the home products to fall into the beauty category?

A. Yes.

Q. Okay. Do you consider -- now you have told me that all of the -- that is beauty category includes more than those four products. But do you believe, do you agree that those four products, fragrance, bath and body, skin and home all fall in the beauty category?

A. Do I believe those four fall under the category of beauty?

Q. Yes?

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2 A. My personal opinion, yes.

3 Q. Okay. And, in your opinion, a
4 specialty retailer is one whose products have
5 limited distribution in any particular area?

6 A. That would be my personal
7 understanding and opinion, yes.

8 Q. Okay. Throughout the complaint
9 and the -- your declaration and the brief,
10 there is references to consulting services.

11 So far we've identified, I think,
12 four categories of consulting services. You
13 scent fashion shows, you consult with
14 corporations about gifting and other aspects
15 of their business that might involve scent.
16 You have developed fragrances. You have
17 helped another company develop their beauty
18 product line, that would be Duchess Marden.
19 And there are the two projects that we
20 discussed earlier that shall remain nameless
21 for now, that you are consulting with the two
22 companies.

23 Are there any other consulting
24 services that you do?

25 A. That we do currently?

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Q. And then at the top of the second page.

A. Page 10?

Q. Yes. In the first paragraph, again, Internet security is so important to Aedes and its customers. And then below that, next paragraph, last line, all ordering information is sent directly to Aedes.

Do you see that?

A. Yes.

Q. Is Aedes used in the business as shorthand for Aedes De Venustas?

A. In what business?

Q. In your business.

A. In our business?

Q. Yes?

A. No. Not really. It is -- the company is, Aedes De Venustas. Some people say Aedes, some people say Aedes De Venustas. There is no really term for that.

Q. But you, yourself, use it on your Internet site, is that correct?

A. What?

Q. Aedes?

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A. Some of the Internet pages read Aedes and some read Aedes De Venustas. But if I look through this, it has Aedes De Venustas all over.

Q. Can you go to page 13?

A. 13.

Q. Yes.

A. Um-hum.

Q. It is the article from the New York Times Magazine, December 2005.

A. Um-hum.

Q. If you -- if you read it through and, particularly, you could look at just the last line on that, page 13, you'll see again use of the term Aedes.

Do you see that?

A. Um-hum.

Q. Now, how was this article written? Did you do a press release which they worked with? Were you interviewed?

A. We were interviewed.

Q. Okay. And did you see the article before it came out?

A. No.

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it.

A. Okay. So -- yes.

Q. Who belongs to the Fashion Group International?

A. I cannot answer the question top of my head.

Q. Have you ever been to any of their meetings?

A. Karl has. Not me.

Q. Karl has. Okay. And, well, if you have never been to any of their meetings -- has anyone ever told you how many people attend these meetings?

A. No.

Q. Now, in another one of the many articles that I read, it says that Aedes De Venustas was a finalist for a FiFi Award.

A. Correct.

Q. What is a FiFi Award?

A. FiFi Award is the equivalent of the Oscar's in the beauty industry.

Q. Who gives it out?

A. The FiFi Foundation.

Q. There is a separate -- there is a

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A. The one from March 16, 2007?

Q. That's right.

A. Um-hum.

Q. Have you ever heard of Robin Burns-McNeill before?

A. Not that I can remember, no?

Q. Actually, in the article they refer to her as Robin Burns. Does that name ring a bell for you?

A. Prior to reading the article?

Q. Right.

A. Not that I remember, no.

Q. And you testified earlier that on occasion Aedes De Venustas appears in Women's Wear Daily.

Do you remember that?

A. Yes.

Q. Okay. Isn't there also another Women's Wear Daily publication that you said that they appear in?

A. That we appeared?

Q. Yes.

A. Yes.

Q. What is that?

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2 A. Well, there is a lot of different
3 W publications. There is W, there is WWD,
4 there is WWD Beauty Business or Beauty Buzz.
5 There is a bunch of other publications. But
6 we have been in some of them. Yes.

7 Q. Okay. Do you read that
8 publication with any regularity?

9 A. Myself?

10 Q. Yes?

11 A. Yes.

12 Q. Are the winners of the Fifi
13 announced or publicized in the Women's Wear
14 Daily publications?

15 A. Yes.

16 Q. Do you know that Robin Burns or
17 Robin Burns-McNeill, as she's known now, has
18 won several FiFi awards?

19 A. No.

20 Q. How do you think it's possible
21 for you to read Women's Wear Daily and to be
22 aware of the FiFi Awards and not to know who
23 Robin Burns-McNeill is?

24 A. From my understanding, she is
25 from -- she has a corporate background, Calvin

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2 Klein and Victoria's Secret or The Limited or
3 whatever.

4 Frankly, I don't read those
5 articles because I couldn't care less what
6 those companies do because it is very
7 different from what we do.

8 Q. Okay.

9 A. I don't have time every day to
10 sit and read the paper piece by piece by
11 piece.

12 As far as the FiFi Awards are
13 concerned, I never really looked into it prior
14 to our nomination in 2006.

15 Q. Okay. Now, I am going to show
16 you another document just so that you are not
17 guessing and you know what I'm talking about.

18 This is the complaint.

19 MR. SHEPHERD: Apparently, I only
20 reproduced marked up copies.

21 MR. HEPPT: Do you want a clean
22 copy? I could make it.

23 MR. SHEPHERD: I think this will
24 work. I will just read it to him.

25 MR. HEPPT: Okay.

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manufacturers. I mean, so I think it is a misleading question.

MR. SHEPHERD: Okay. Let's ask a different question.

MR. HEPPT: Okay.

Q. Of all the products that you sell, what percentage are marked with the trademark other than Aedes De Venustas?

A. I can't say top of my head. I would need to look it up.

Q. Would you? Okay. Can you come -- is it 90 percent?

A. I would need to look it up.

Q. Okay. Now, Aedes De Venustas does have products that are made exclusively for Aedes De Venustas, correct?

A. Correct.

Q. When you have a product that's made exclusively for you, what part do you and Karl Brandl play in the manufacturing of that product, and what part does the manufacturer play?

A. Well, physically manufacturing we are not involved because that is the job of

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First of all, you know, after having read the article, excuse my French, it pissed us off. And then if we would have known that we need logs, I would have definitely done them. But, no, we didn't.

Q. Now, have you received any calls since you sent the cease and desist letter to Venustas International?

A. Yes, we got, about three weeks ago, one phone call.

Q. Did you write down any information about that call?

A. No. Like as to who it was?

Q. Right?

A. Yes, no.

Q. Okay.

A. No.

Q. Now, you yourself received some of the calls?

A. Yes. The very last one, yes, and then some of the other ones.

Q. Now, can you in the declaration, it says that the calls from people asking to speak with people at Venustas International

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including Sam Guson, the president and chief executive officer also received and continue to receive numerous telephone calls from people in the fashion and beauty field congratulating us on or asking about our new contract with Ann Taylor.

Does that essentially cover everything that, you know, was said in those calls or was there anything else?

A. That pretty much covers what was said from what I know. I don't receive all the phone calls. There is different people, you know, picking up the phone but pretty much.

Q. Well, at least for the calls you received --

A. Yes.

Q. -- that was everything?

A. Pretty much because we made it very clear we are not affiliated or associated with Venustas International whatsoever.

Q. Okay. Now, it says that you would receive telephone calls from people in the fashion and beauty field. How do you know

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C E R T I F I C A T E

STATE OF NEW YORK)
 ss:)
COUNTY OF NEW YORK)

I, NIKKI MONTELLO, a Notary Public
within and for the State of New York, do
hereby certify:

That ROBERT GERSTNER, the witness whose
examination is hereinbefore set forth, was
duly sworn by me and that this transcript
is a true record of the testimony given by
such witness.

I further certify that I am not related
to any of the parties to this action by
blood or marriage, and that I am in no way
interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set
my hand this 13th day of June,
2007.

Nikki Montello

NIKKI MONTELLO

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